

IN THE SUPREME COURT OF MISSOURI

Case No. SC87550

HENRY RIZZO, ET AL.,
Respondents/Cross-Appellants,

v.

STATE OF MISSOURI, ET AL.,
Appellant/Cross-Respondents.

**APPEAL FROM CIRCUIT COURT OF COLE COUNTY, MISSOURI
NINETEENTH JUDICIAL CIRCUIT
THE HONORABLE RICHARD G. CALLAHAN, JUDGE**

**RESPONDENTS' BRIEF AND CROSS-APPELLANT'S BRIEF
OF RESPONDENTS/CROSS-APPELLANTS HENRY RIZZO,
LINDSAY RUNNELS, AND ANGELA CASTLES**

JAMES R. WYRSCH **MO #20730**
KEITH E. DRILL **MO #37065**
WYRSCH HOBBS & MIRAKIAN, P.C.
1100 Walnut, Suite 1600
Kansas City, Missouri 64106
816-221-0080 Telephone
816-221-3280 Facsimile
*Attorneys for Respondents/
Cross-Appellants*

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	6
JURISDICTIONAL STATEMENT	11
STATEMENT OF FACTS	12

RESPONDENTS' BRIEF

POINTS RELIED ON	17
------------------------	----

ARGUMENT

- I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT SECTION 115.348 VIOLATES THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND MISSOURI CONSTITUTIONS IN THAT THE STATUTE DOES CREATE A CLASSIFICATION OF PERSONS CONVICTED OF FEDERAL CRIMES, INCLUDING MISDEMEANORS, AND, UNDER A RATIONAL BASIS TEST, UNCONSTITUTIONALLY TREATS SUCH PERSONS DIFFERENTLY FROM PERSONS CONVICTED OF MISDEMEANORS UNDER MISSOURI LAW OR LAWS OF OTHER STATES. FURTHER, THOUGH THE TRIAL COURT DID NOT SO HOLD, §115.348 IMPAIRS RESPONDENTS' FUNDAMENTAL RIGHTS TO VOTE, AND TO ASSOCIATE WITH AND EXERCISE THEIR RIGHTS OF EXPRESSION IN SUPPORT OF POLITICAL CANDIDATES, AND IMPAIRS RIZZO'S RIGHT TO RUN

FOR ELECTIVE OFFICE, WHICH IS ANALOGOUS TO THE FUNDAMENTAL RIGHT TO VOTE, AND FAILS TO MEET EITHER A STRICT SCRUTINY TEST OR RATIONAL OR REASONABLE BASIS TEST TO SHOW THAT IT FURTHERS A LEGITIMATE STATE INTEREST IN PLACING A LIMITATION ON THE RIGHT TO HOLD ELECTIVE OFFICE IN MISSOURI¹⁹

1. SECTION 115.348 CREATES A CLASSIFICATION AND IS SUBJECT TO EQUAL PROTECTION ANALYSIS²¹
2. SECTION 115.348 VIOLATES EQUAL PROTECTION²²
 - A. SECTION 115.348 IMPINGES ON FUNDAMENTAL RIGHTS AND, THUS, IS SUBJECT TO STRICT SCRUTINY REVIEW, UNDER WHICH IT MUST BE DEEMED UNCONSTITUTIONAL²³
 - B. SECTION 115.348 ALSO FAILS TO WITHSTAND RATIONAL BASIS REVIEW AS IT BEARS NO RATIONAL RELATIONSHIP TO ANY LEGITIMATE STATE INTEREST BY DISQUALIFYING ONLY FOR FEDERAL FELONIES AND MISDEMEANORS AND NOT FOR STATE OFFENSES²⁸
3. SECTION 115.348 VIOLATES RESPONDENTS' FIRST AMENDMENT RIGHTS BY DEPRIVING THEM OF THEIR

CONSTITUTIONALLY-PROTECTED RIGHTS TO
PARTICIPATE IN THE POLITICAL PROCESS AND TO
EXERCISE THEIR RIGHT TO VOTE³⁵

CROSS-APPELLANTS' BRIEF

POINTS RELIED ON.....38

ARGUMENT

- I. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 21 OF THE MISSOURI CONSTITUTION IN THAT AMENDMENTS TO HB 58, INCLUDING §115.348, CHANGED ITS ORIGINAL PURPOSE⁴²
- II. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 23 OF THE MISSOURI CONSTITUTION IN THAT HB 58, AS FINALLY PASSED, INCLUDES MULTIPLE SUBJECTS⁵⁰
- III. THE TRIAL COURT ERRED IN NOT FINDING THE §115.348 VIOLATED ARTICLE III, SECTION 28 OF THE MISSOURI CONSTITUTION BY AMENDING SECTION 561.021.2 RSMO. WITH REGARD TO THE EFFECT OF A FEDERAL FELONY CONVICTION ON THE RIGHT TO HOLD ELECTED PUBLIC OFFICE IN MISSOURI⁵²
- IV. THE TRIAL COURT ERRED BY NOT FINDING THAT SECTION 115.348 AND HB 58 VIOLATE ARTICLE I, SECTION 2; ARTICLE VIII,

SECTION 2; AND ARTICLE XII OF THE MISSOURI CONSTITUTION BY
PURPORTING TO AMEND THE CONSTITUTIONAL RIGHT TO RUN
FOR ELECTIVE OFFICE BY STATUTE RATHER THAN
CONSTITUTIONAL AMENDMENT⁵³

- V. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND
HB 58 DID NOT VIOLATE ARTICLE VI, SECTION 18 OF THE
MISSOURI CONSTITUTION IN THAT THEY INFRINGE ON THE
RIGHTS OF THE CITIZENS OF JACKSON COUNTY TO FORM THEIR
OWN FORM OF GOVERNMENT AND SET QUALIFICATIONS FOR
ELECTED OFFICIALS BY ESTABLISHING ARBITRARY LIMITATIONS
ON THOSE WHO MAY RUN FOR OFFICE IN CONTRAVENTION OF
PROVISIONS IN JACKSON COUNTY'S DULY ADOPTED HOME RULE
CHARTER⁵⁴
- VI. THE TRIAL COURT ERRED IN NOT FINDING THAT SECTION 115.348
AND HB 58 VIOLATE ARTICLE III, SECTION 40(30) OF THE MISSOURI
CONSTITUTION BECAUSE INCLUSION OF §115.348 IN HB 58 MADE
IT A SPECIAL LAW⁵⁷
- VII. THE TRIAL COURT ERRED BY NOT FINDING THAT §115.348 WAS
A SPECIAL LAW, THE PASSAGE OF WHICH IN HB 58 VIOLATED THE
PROVISIONS OF ARTICLE III, SECTION 42 OF THE MISSOURI
CONSTITUTION⁵⁸

VIII. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348
AND HB 58 DID NOT VIOLATE ARTICLE I, SECTION 13 OF THE
MISSOURI CONSTITUTION, WHICH PROHIBITS LAWS THAT ARE
RETROSPECTIVE IN APPLICATION, IN THAT THE STATUTE
CLEARLY IMPAIRED ONE OR MORE VESTED LEGAL RIGHTS OF
RESPONDENTS⁵⁹

CONCLUSION.....	60
CERTIFICATE OF SERVICE	61
CERTIFICATE OF COMPLIANCE	62

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Antonio v. Kirkpatrick</i> , 579 F.2d 1147 (8th Cir. 1978).....	26, 27, 34
<i>Bullock v. Carter</i> , 405 U.S. 134 (1972).....	24, 34
<i>City of Cleburne v. Cleburne Living Ctr., Inc.</i> , 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).....	25
<i>Clements v. Fashing</i> , 457 U.S. 957 (1982)	24
<i>Gralike v. Cook</i> , 191 F.2d 911 (8th Cir. 1999).....	36
<i>Lubin v. Panish</i> , 415 U.S. 709 (1974).....	24
<i>McCarthy v. Kirkpatrick</i> , 420 F. Supp. 366 (W.D.Mo. 1976).....	36
<i>McLaughlin v City of Canton</i> , 947 F. Supp. 954 (S. D. Miss. 1995)	25
<i>Peeper v. Calloway County Ambulance District</i> , 122 F.3d 619 (8th Cir. 1997)	34
<i>Plyler v. Doe</i> , 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)	25
<i>Reeder v. Kansas City Board of Police Com'rs</i> , 796 F.2d 1050 (8th Cir, 1986) ...	36
<i>Reynolds v. Sims</i> , 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964)	25
<i>Richardson v. Ramirez</i> , 418 U.S. 24 (1974).....	29
<i>Shapiro v. Thompson</i> , 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969)....	26
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	24
<i>Torres-Torres v. Puerto Rico</i> , 353 F.3d 79 (1st Circuit 2003)	28
<i>United States v. Lewis</i> , 240 F.2d 866 (10th Cir. 2110).....	30
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968).....	24

STATE CASES

<i>Akin v. Director of Revenue</i> , 934 S.W.2d 295 (Mo. banc 1996).....	49
<i>Allied Mutual Insurance Co. v. Bell</i> , 185 S.W.2d 4 (Mo. 1945).....	49
<i>Carmack v. Director, Missouri Department of Agriculture</i> , 945 S.W.2d 956 (Mo. banc 1997)	52
<i>City of Kansas City v. Torpe</i> , 499 S.W.2d 454 (Mo. 1973).....	54
<i>City of St. Louis v. Lieberman</i> , 547 S.W.2d 452 (Mo. banc 1977).....	5122, 23
<i>City of St. Louis v. Tiefel</i> , 42 Mo. 578 (1868)	51
<i>Collins v. Director of Revenue</i> , 691 S.W.2d 246 (Mo. banc 1985)	28
<i>Cooper v. Mo. Board of Probation & Parole</i> , 866 S.W.2d 135 (Mo. banc 1993).....	22,23
<i>de novo. Barker v. Barker</i> , 98 S.W.3d 532 (Mo. banc 2003).....	20
<i>Dillon Co. v. City of Eureka</i> , 12 S.W.3d 322 (Mo. banc 2000).....	42
<i>Fire District of Lemai v. Schmidt</i> , 184 S.W.2d 593 (Mo. banc 1945).....	57
<i>Grant v. City of Kansas City, Missouri</i> , 432 S.W.2d 89 (Mo. banc 1968)	55
<i>Hammerschmidt v. Boone County</i> , 877 S.W.2d 98 (Mo. banc 1994).....	50, 51
<i>Komosa v. Komosa</i> , 939 S.W.2d 479 (Mo. App. E.D. 1997)	36
<i>Lincoln Credit Co. v. Peach</i> , 636 S.W.2d 31 (Mo. banc 1982)	59
<i>Mid-State Distr. Co. v. City of Columbia</i> , 617 S.W.2d 370 (Mo. App. W.D. 1981).....	28
<i>Missouri Health Care Association v. Attorney General of the State of Missouri</i> , 953 S.W.2d 617 (Mo. 1997)	51
<i>Missourians to Protect the Initiative Process v. Blunt</i> , 799 S.W.2d 824	

(Mo. banc 1990)	52
<i>Preisler v. City of St. Louis</i> , 322 S.W.2d 748 (Mo. 1959)	36
<i>Ryan v. Kirkpatrick</i> , 669 S.W.2d 215 (Mo. banc 1984).....	36
<i>Silcox v. Silcox</i> , 6 S.W.3d 899 (Mo. banc 1999).....	59
<i>St. Louis Health Care Network v. State</i> , 968 S.W.2d 145 (Mo. 1998).....	51
<i>State ex rel. Creamer v. Blair</i> , 270 S.W.2d 1 (Mo. 1954)	54
<i>State ex rel. Kansas City v. North Kansas City</i> , 228 S.W.2d 762 (Mo. banc 1950).....	56
<i>State ex rel. Lionberger v. Polle</i> , 7 Mo. 645 (1880)	57
<i>State ex rel. McNary v. Stussie</i> , 518 S.W.2d 630 (Mo. banc 1974)	53
<i>State ex rel. Shepley v. Gamble</i> , 280 S.W.2d 656 (Mo. banc 1955)	56
<i>State ex rel. Upchurch v. Blunt</i> , 810 S.W.2d 515 (Mo. 1991).....	54
<i>State v. Miller</i> , 45 Mo. 495 (1870)	51
<i>Stroh Brewery Co. v. State</i> , 954 S.W.2d 323 (Mo. banc 1997)	42, 49, 51
<i>Tremayne v. City of St. Louis</i> , 6 S.W.2d 935 (Mo. banc 1928)	56
<i>Westin Crown Center Plaza Hotel Co. v. King</i> , 664 S.W.2d 2 (Mo. banc 1984) ..	51

DOCKETED CASES

<i>Jackson County v. State of Missouri</i> , Case No. 05-AC-CC00793.....	15
--	----

FEDERAL STATUTES

13 U.S.C. § 223	30
15 U.S.C. §1211	29
16 U.S.C. § 373	30

16 U.S.C. § 9a	30
18 U.S.C. § 1863	30
Lacy Act, 16 U.S.C. §§ 3371-3378	30

MISCELLANEOUS

Ruud, "No Law Shall Embrace More than One Subject",

42 Minn. L. Rev. 389, 391(1958)	50, 51
---------------------------------------	--------

MISSOURI STATUTORY PROVISIONS

MO. REV. STAT. § 115.348	<i>passim</i>
MO. REV. STAT. § 250.140	48
MO. REV. STAT. § 263.245	48
MO. REV. STAT. § 311.0987	48
MO. REV. STAT. § 561.021	31, 32, 33, 34, 49, 53
MO. REV. STAT. § 561.026	32
MO. REV. STAT. § 565.024	29
MO. REV. STAT. § 701.038	49
MO. CONST. Art. I, §2.....	11, 14, 34, 54
MO. CONST. Art. I, §§ 8 and 9	35
MO. CONST. Art. I, § 25.....	54
MO. CONST. Art. III, § 21	14, 15, 42, 43, 49, 50
MO. CONST. Art. III, § 23.....	14, 15, 50
MO. CONST. Art. III, § 28	14, 15

MO. CONST. Art. III, § 40(30)	14, 57
MO. CONST. Art. III, § 42	14, 58, 59
MO. CONST. Art. V, § 3	11
MO. CONST. Art. VI, §18	14, 15, 55, 56
MO. CONST. Art. VIII, § 2	14, 54
MO. CONST. Art. XII	54
Constitutional Home Rule Charter of Jackson County, Art. II, §§ 5, 9, 13	55

JURISDICTIONAL STATEMENT

The issues in this case are whether MO. REV. STAT. § 115.348 (Cum. Supp. 2005) violates the equal protection clauses of the United States and Missouri Constitutions, the First Amendment to the United States Constitution and Art. I, §2 of the Missouri Constitution, and whether that statute, as well as House Bill 58, were passed by the 2005 Missouri General Assembly in violation of Article I, § 2, Article III, §§ 21, 23, 28, 40(30) and 42, Article VI, §18, and Article VIII, § 2 of the Missouri Constitution. The trial court held that § 115.348 violated equal protection, but denied the other grounds for constitutional challenge. Because this appeal and cross-appeal involve the validity of a statute, this Court has exclusive appellate jurisdiction. MO. CONST. Art. V, § 3.

STATEMENT OF FACTS

Respondents/Cross-Appellants do not dispute the Statement of Facts set forth in Appellant's Opening Brief. However, they would add the following additional factual matters drawn from the record and necessary to determination of the issues on appeal: :

On January 5, 2005, House Bill 58 (hereinafter "HB 58") was first read into the House of the Missouri Legislature. L. F. 35, 418. As introduced, HB 58 was an act "To repeal Sections 50.760, 50.770, 50.780, 50.080, 50.810, 50.815, and 250.140, RSMo, and to enact in lieu thereof, seven new sections relating to political subdivisions, with penalty provisions." L. F. 35, 40.¹ On March 15, 2005, the Missouri House adopted House Committee Substitute for HB 58 (hereinafter "HCS HB 58"), which repealed several more sections than the seven enumerated in the original version and "to enact in lieu thereof thirty-three new sections relating to political subdivisions, with an emergency clause for a certain section." L. F. 35, 49, 418. On May 5, 2005, the Missouri Senate adopted Senate Committee Substitute for HCS HB 58 (hereinafter "SCS HCS HB 58"). L.F. 35, 419. On that same date, the Missouri House refused to concur with the Senate amendment of HCS HB 58, so the bill was assigned to a conference committee. *Id.* On May 13, 2005, the Missouri House and Senate adopted

¹ Citations to the Legal File submitted by Appellants will be "L. F. ____", Citations to Respondents' Supplement to Legal File will be "L.F. Supp. ____". Citation to the trial transcript, which was filed with the Legal File, will be "Tr. ____".

the conference committee substitute for SCS HCS HB 58. L.F. 35, 419-20. As finally passed, HB 58 had been amended to enact 165 new sections to the Revised Statutes of Missouri. L.F. 35, 219.

Jackson County, Missouri is a county of the first class. L. F. 36. Jackson County adopted a Home Rule Charter in 1973, Article III of which provides for the establishment of a county legislature, and Article II, Sections 5, 9, and 13 of which address certain qualifications and eligibility of persons seeking election to membership in the county legislature. *Id.*

Henry Rizzo is currently a member of the Jackson County Legislature and serves as its Chair. L.F. 452; Tr. 7. He was a member of the Missouri House for 18 years, from 1984 to 2001. L.F. 452; Tr. 8. In 1991, while a member of the House, Rizzo entered an Alford plea to a federal misdemeanor offense of making a false statement to a financial institution. *Id.* At the time he entered his plea, Rizzo understood that the plea would not impair his ability to hold elective office in Missouri. Tr. 9. After his plea to the misdemeanor offense, Rizzo was re-elected to the Missouri House three times. L.F. 13, 452. Rizzo has never had his right to vote in Missouri impaired by his misdemeanor conviction. Tr. 10.

The amendment to HB 58 that added §115.348 RSMo. 2005 Cum. Supp. (hereinafter “§115.348”) was sponsored by Senator Victor Callahan of Kansas City. L.F. 17, ¶75; L.F. 30, ¶75; Tr. 11-12; L.F. Supp. 1-2. Rizzo and Sen. Callahan have had many political differences in the past, including substantial political differences at the time §115.348 was

passed. Tr. 12. After passage of HB 58, Rizzo had a conversation with Sen. Callahan wherein Callahan told him that §115.348 would eliminate him from office. Tr. 16.

Respondents Lindsay Runnels and Angela Castles are residents of and qualified electors in Jackson County, and in the County legislative district in which Rizzo presently serves and intends to run for re-election. L.F. 37, 452. Runnels and Castles desire to publicly support Rizzo's re-election and desire to vote for him for re-election to the County Legislature. *Id.*

Respondents challenged § 115.348 on various grounds: (1) that it violates their rights to due process, equal protection, free speech, and protection from retrospective laws; (2) that § 115.348 violates Art. VI, §18 of the Missouri Constitution in that it infringes on the rights of the citizens of Jackson County to form their own form of government and set their own qualifications as to the elected official within Jackson County; (3) that HB 58 was passed in violation of Art. III, §§ 21 and 23 of the Missouri Constitution because, as finally passed, it contained multiple subjects and its original purpose was changed by the inclusion of § 115.348; (3) that HB 58 violates Art. III, § 40(30) of the Missouri Constitution in that inclusion of § 115.348 made it a special law - directed to Rizzo with the improper and punitive purpose of depriving him of his right to hold elective office in Jackson County; (5) that, as a special law, HB 58 failed to follow the provisions of Art. III, § 42 of the Missouri Constitution; (6) that HB 58 and §115.348 violate Art. I, § 2, Art. VIII, § 2 and Art. III, § 28 of the Missouri Constitution by purportedly to

improperly amend the constitutional right to run for elective office by statute rather than by constitutional amendment; and (7) that HB 58 and §115.348 violate Art. III, § 28 of the Missouri Constitution by improperly amending a section of the revised statutes of Missouri. L.F. 454.

In another, earlier case, *Jackson County v. State of Missouri*, Case No. 05-AC-CC00793, the trial court, Hon. Richard G. Callahan, had previously considered and rejected the same issues raised by Respondents that HB 58 was unconstitutionally passed. L.F. 454, L.F. 421-433. Consequently, the trial court again ruled that HB 58 was constitutionally passed for the same reasons as in its order in the Jackson County case. L.F. 454.²

In finding that §115.348 was unconstitutional and violated equal protection, the trial court stated:

² The Jackson County case is now on appeal to this Court in No. SC 87405. The issues before the Court in that appeal which are also raised in this cross-appeal include challenges under MO. CONST. Art. VI, § 18 and Art. III, §§ 21 and 23. L. F. 421.

Whether fifty years ago there may or may not have been a basis for considering federal crime more serious than state crime, this Court can hardly ignore the last twenty-five years of federal criminalization of areas that were traditionally thought to have been reserved for the States. This would include federal criminal laws dealing with juvenile delinquency, stalking, child support, school violence, and domestic violence, just to note a few. Despite the criticism of the federal judiciary's Administrative Conference, individual justices of the United States Supreme Court, the American Bar Association, the National District Attorneys Association, and academics, the trend has continued and only served to trivialize any vestiges of "greater seriousness" that federal crime might have once enjoyed. The proposition that federal misdemeanors are more serious than state felonies is unsupportable. This Court concludes that no rational purpose is served by permanently banning from public office all individuals convicted of federal misdemeanors, while allowing those who have committed state crimes of greater seriousness to seek public office. Such a differentiation does not ensure integrity in the political process, rather it holds that process up to ridicule. Instead of dampening cynicism, it heightens it. The differing treatment is not rationally related to the goal of the legislation, it is hostile to it.

L.F. 459.

RESPONDENTS' BRIEF

POINTS RELIED ON

THE TRIAL COURT DID NOT ERR IN HOLDING THAT SECTION 115.348 VIOLATES THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND MISSOURI CONSTITUTIONS IN THAT THE STATUTE DOES CREATE A CLASSIFICATION OF PERSONS CONVICTED OF FEDERAL CRIMES, INCLUDING MISDEMEANORS, AND, UNDER A RATIONAL BASIS TEST, UNCONSTITUTIONALLY TREATS SUCH PERSONS DIFFERENTLY FROM PERSONS CONVICTED OF MISDEMEANORS UNDER MISSOURI LAW OR LAWS OF OTHER STATES. FURTHER, THOUGH THE TRIAL COURT DID NOT SO HOLD, §115.348 IMPAIRS RESPONDENTS' FUNDAMENTAL RIGHTS TO VOTE, AND TO ASSOCIATE WITH AND EXERCISE THEIR RIGHTS OF EXPRESSION IN SUPPORT OF POLITICAL CANDIDATES, AND IMPAIRS RIZZO'S RIGHT TO RUN FOR ELECTIVE OFFICE, WHICH IS ANALOGOUS TO THE FUNDAMENTAL RIGHT TO VOTE, AND FAILS TO MEET EITHER A STRICT SCRUTINY TEST OR RATIONAL OR REASONABLE BASIS TEST TO SHOW THAT IT FURTHERS A LEGITIMATE STATE INTEREST IN PLACING A LIMITATION ON THE RIGHT TO HOLD ELECTIVE OFFICE IN MISSOURI.

McLaughlin v City of Canton, 947 F.Supp. 954 (S. D. Miss. 1995)

Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978)

Bullock v. Carter, 405 U.S. 134 (1972)

MO. REV. STAT. §115.348 (CUM. SUP. 2005)

ARGUMENT

- I. THE TRIAL COURT DID NOT ERR IN HOLDING THAT SECTION 115.348 VIOLATES THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND MISSOURI CONSTITUTIONS IN THAT THE STATUTE DOES CREATE A CLASSIFICATION OF PERSONS CONVICTED OF FEDERAL CRIMES, INCLUDING MISDEMEANORS, AND, UNDER A RATIONAL BASIS TEST, UNCONSTITUTIONALLY TREATS SUCH PERSONS DIFFERENTLY FROM PERSONS CONVICTED OF MISDEMEANORS UNDER MISSOURI LAW OR LAWS OF OTHER STATES. FURTHER, THOUGH THE TRIAL COURT DID NOT SO HOLD, §115.348 IMPAIRS RESPONDENTS' FUNDAMENTAL RIGHTS TO VOTE, AND TO ASSOCIATE WITH AND EXERCISE THEIR RIGHTS OF EXPRESSION IN SUPPORT OF POLITICAL CANDIDATES, AND IMPAIRS RIZZO'S RIGHT TO RUN FOR ELECTIVE OFFICE, WHICH IS ANALOGOUS TO THE FUNDAMENTAL RIGHT TO VOTE, AND FAILS TO MEET EITHER A STRICT SCRUTINY TEST OR RATIONAL OR REASONABLE BASIS TEST TO SHOW THAT IT FURTHERS A LEGITIMATE STATE INTEREST IN PLACING A LIMITATION ON THE RIGHT TO HOLD ELECTIVE OFFICE IN MISSOURI.

Appellants correctly state that this Court's standard of review of constitutional challenges to statute is *de novo*. *Barker v. Barker*, 98 S.W.3d 532, 534 (Mo. banc 2003). Thus, this Court may review not only the finding by the trial court that § 115.348 is unconstitutional on equal protection grounds, but should consider also Respondents' arguments that the statute impairs their First Amendment rights, their Due Process rights and other constitutional challenges made below.³

³ Respondents have also cross-appealed from those parts of the trial court's Opinion and Judgment that rejected their arguments that § 115.348 and HB 58 are

unconstitutional or were unconstitutionally passed. In their Respondents' Brief portion of this Brief, Respondents will address the arguments asserted by Appellants in their Opening Brief, as well as their arguments that the statute violates their First Amendment and Due Process rights, as those arguments are closely related. Respondents also direct the Court to their separate legal arguments and constitutional challenges to § 115.348 and HB 58 as set forth in their Cross-Appeal portion of this Brief. Should the Court affirm the order of the trial court and find that § 115.348 violates equal protection, it need not reach the other issues, many of which are pending in No. SC 87405, and can be considered in that case, where more detailed briefing and focused argument can be permitted.

Pages 10 to 12 of Appellants' Brief cites cases stating the general proposition that, in reviewing Acts passed by the Legislature, the Court should uphold legislative enactments unless the laws are clearly unconstitutional. Respondents do not dispute the general contention that the Legislature is entitled to some deference in the exercise of its lawmaking duties. However, there is no dispute that this Court may properly strike down statutes which are unconstitutional under standards established by the United States or Missouri Constitutions.

1. Section 115.348 Creates a Classification and Is Subject to Equal Protection Analysis.

Appellants' first argument, that § 115.348 does not, on its face, create a classification, is without merit and completely misses the point of Respondents' arguments and the grounds upon which the trial court correctly concluded that the statute violates equal protection. Section 115.348 creates a classification of individuals who have been convicted of misdemeanors or felonies under the laws of the United States and renders them ineligible to hold elective office in the State of Missouri, at any level, for life. Having entered an *Alford* plea and been found guilty of a federal court misdemeanor in 1991, Rizzo would be ineligible to be a candidate for elective office in the State of Missouri, solely as a result of that federal court misdemeanor conviction. Thus, on the face of the statute, it creates a classification of persons who, solely by virtue of the fact that they have been convicted of crimes classified as felonies or misdemeanors under the laws of the United States, are

ineligible to be candidates for elective office. This is clearly an act of the Legislature which creates a classification of persons who may run for office, and thus implicates equal protection analysis.

The issue has nothing to do with the interrelationship between persons within that classification, such as persons convicted of federal felonies versus those convicted of federal misdemeanors. Rather, the issue raised by Respondents, and upon which the trial court concluded the statute was unconstitutional, is that the statute treats such persons differently from those convicted of felonies and misdemeanors under Missouri law and the laws of other states. This is the crux of the equal protection analysis. Contrary to the position taken in Appellants' Brief, § 115.348 clearly establishes a classification for purposes of equal protection analysis.

2. Section 115.348 Violates Equal Protection.

On its face, § 115.348 establishes a classification – of persons convicted of federal offenses – who are treated differently from persons convicted of state offenses. The statute deals with a simple issue – disqualification to run for elective office based on conviction of a crime. In analyzing the constitutionality of the statute, however, Appellants urge the Court to take far too narrow a view of the impact of the statute.

Appellants suggest, without any elaboration or further argument, that persons convicted of federal crimes are not similarly situated to those convicted of state crimes (Appellants' Brief at 14). In doing so, their reliance upon *City of St. Louis v. Lieberman*, 547 S.W.2d 452 (Mo. banc 1977) and

Cooper v. Mo. Bd. of Probation & Parole, 866 S.W.2d 135 (Mo. banc 1993), is misplaced. In *Lieberman*, this Court considered an ordinance relating to the State's interest in regulating pawn brokers. There, the Court declined to consider pawn brokers similarly situated to junk dealers, second-hand shops, and antique businesses for purposes of an equal protection challenge. *Id.* at 458. *Cooper* dealt with an equal protection challenge in connection with standards applied to parole for conviction of crimes. There, this Court concluded that, in the context of a parole system, which necessarily takes into account individualized aspects of the crime of conviction and peculiar circumstances of each prospective parolee, equal protection issues were not implicated. *Id.* at 137. Those cases are factually and legally distinguishable from the circumstances at issue here. *Lieberman* dealt with different types of businesses as well as a particularized regulatory environment (pawn brokers). *Cooper* involved factually and legally distinguishable interests under a regulated system of classification (parole eligibility). Here, however, the issue is how § 115.348 treats those with federal convictions (and, Mr. Rizzo's case, a federal misdemeanor conviction) differently from persons convicted of state misdemeanors (or felonies) for purposes of the right to run for elective office.

A. Section 115.348 Impinges On Fundamental Rights and, Thus, Is Subject to Strict Scrutiny Review, Under Which It Must be Deemed Unconstitutional.

While Respondents acknowledge that most courts have not generally considered the right to hold public office to be a fundamental right and, therefore requiring strict scrutiny analysis in all cases, the United States Supreme Court has recognized that laws impacting upon a candidate's access to the ballot require special analysis. In a case cited by Appellants, *Clements v. Fashing*, 457 U.S. 957 (1982), the Court found that a Texas statute setting waiting periods for persons seeking

election from judicial to legislative offices was constitutional. Although the Court stated that the right to candidacy was not a “fundamental right,” it noted that “in approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.” *Id.* at 963, citing to *Bullock v. Carter*, 405 U.S. 134 (1972). The Court stated further:

A decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interest the state seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.

. . . .

Our ballot access cases, however, do focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the “availability of political opportunity.’

Clements, 457 U.S. 964-65, citing to *Storer v. Brown*, 415 U.S. 724 (1974), *Williams v. Rhodes*, 393 U.S. 23 (1968), and *Lubin v. Panish*, 415 U.S. 709 (1974).

In *McLaughlin v City of Canton*, 947 F.Supp. 954 (S. D. Miss. 1995) the United States District Court for the Southern District of Mississippi considered the claim by a candidate for elected office challenging the constitutionality of a state statute that denied him the right to vote and hold office, based on a conviction of crime involving false pretenses. Though based on a Mississippi statute, the District Court’s constitutional analysis is applicable to §115.348. The court found, at 947 F.Supp. 973, that the statute’s restrictions, for a guilty plea to a misdemeanor, violated the Equal Protection Clause of the Fourteenth Amendment:

The Equal Protection Clause essentially requires that all persons similarly situated be treated alike. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985); *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 2394, 72 L.Ed.2d 786 (1982). Accordingly, classifications that disadvantage a suspect class or that impinge upon the exercise of a fundamental right are treated as presumptively invidious; the state must demonstrate that its classification has been precisely tailored to serve a compelling governmental interest.

The court also recognized that the United States Supreme Court has chosen to apply a strict scrutiny standard to voting because of the significance of the franchise as the guardian of all other rights. 947 F.Supp. at 974, *citing Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966); *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed.2d 506 (1964).

The court also determined that the proper standard of review would be a strict scrutiny test, rather than rational basis test, and required the state to demonstrate a “substantial and compelling reason” for the restrictions. *Id.* at 976. In this context, the court also treated the right to run for public office as co-extensive with the right to vote. *Id.* at 961. Concluding that the state could not articulate an adequate basis, it struck down the statute. *Id.* at 978.

In *Antonio v. Kirkpatrick*, 579 F.2d 1147 (8th Cir. 1978), a Republican candidate for Missouri State Auditor, and two citizens and voters desiring to vote for him, brought suit in U.S. District Court challenging the ten-year durational residency requirement and seeking to compel the Secretary of State to certify Antonio for the primary election. The District Court (Hon. Elmo Hunter) concluded that the restriction infringed on the fundamental rights to vote

and travel interstate, applying a strict scrutiny test. Under that doctrine, classifications based on “suspect” criteria or effecting fundamental rights will be subjected to strict scrutiny and “a State must come forth with a compelling and substantial interest to justify the classification.’ 579 F.2d at 1149, *citing Dunn v. Blumstein*, 405 U.S. 330, 335, 341-43, 92 S.Ct. 995, 31 L.Ed.2d. 274 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 634, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

The District Court also held that the classification was not reasonably related to any asserted state interests or to any of the requirements of that elected position and, thus, denied equal protection. The Eighth Circuit determined that the lesser “reasonable basis” test was applicable, concluding that the residency requirement only minimally infringed on the rights of voters to participate in the election process and because the requirement “did not irretrievably foreclose a person from running for the office of State Auditor” and “a potential candidate for State Auditor can actively participate in the political process by running for other public offices during the ‘waiting period’.” 579 F.2d at 1149. Nevertheless, the Court of Appeals affirmed the finding of the District Court that the classification violated equal protection. *Id.*

Unlike the candidate in *Antonio*, Mr. Rizzo will be forever prohibited from holding elective office under §115.348 RSMo. Similarly, Runnels and Castles will never have the ability the other voters supporting Antonio had to potentially vote for him at a later date. Section 115.348 therefore deprives Runnels and Castles of their constitutionally protected right to exercise their vote and is unconstitutional. Accordingly, the reasoning for applying a

reasonable basis standard is inapplicable here and the Court should apply a strict scrutiny test, under which the statute clearly must fail. It also deprives Rizzo of the right to vote for himself.

B. Section 115.348 Also Fails to Withstand Rational Basis Review as it Bears No Rational Relationship to Any Legitimate State Interest by Disqualifying Only for Federal Felonies and Misdemeanors and Not For State Offenses.

The cases cited by Appellants do not advance their argument that § 115.348 meets a rational or reasonable basis test under an equal protection challenge. Appellant's rely first on *Lieberman, supra*, which had to do with the State's interest in regulating pawn brokers, a limited and discrete subset of merchants, and does not limit Respondents' equal protection arguments here. They also rely on *Torres-Torres v. Puerto Rico*, 353 F.3d 79 (1st Circuit 2003), a case where the court upheld a law disqualifying persons removed from public office for misconduct from running for mayor. The fact that such a narrowly drawn restriction on the right to run for office might withstand equal protection scrutiny in that case in no way undercuts the obvious conclusion that the arbitrary and sweeping limitation created by § 115.348 in this case is constitutional. Similarly unavailing is Appellants' reliance on *Mid-State Distr. Co. v. City of Columbia*, 617 S.W.2d 370 (Mo. App. W.D. 1981). That case dealt with the State's interests in adoption of a bottle and can deposit law. The limitation of and interests to be furthered by that legislation were far narrower than the very basic rights at issue here - - the right to hold elective office. The holding of the Court of Appeals in that case does nothing to diminish the strength of Respondents' arguments here.

Additionally, the fact that this Court upheld the system of classification of impaired drivers at issue in *Collins v. Director of Revenue*, 691 S.W.2d 246 (Mo. banc 1985) (cited by Appellants) also

does not bear on Respondents' claims. The state interest in regulating impaired drivers, in a complicated regulatory scheme involving differing laws and civil penalties, is far different from the arbitrary distinction between federal and state offenses created by § 115.348.

As the Court is well aware, the law and courts interpreting the law draw significant distinctions between felonies and misdemeanors, recognizing that felonies, as a general classification of offenses, are usually considered to be more serious than other criminal offenses. However, the statute at issue in this case is far broader and substantially more inconsistent with other laws of the State of Missouri. Section 115.348 RSMo. goes far beyond imposing a restriction based solely on conviction of a felony, such as the United States Supreme Court approved in *Richardson v. Ramirez*, 418 U.S. 24 (1974). Rather, by rolling into its sweeping coverage federal misdemeanors, § 115.348 implicates many more disparate, separate, and different criminal offenses which bear no possible connection to state interests or concerns relating to suitability to run for or hold public office. Moreover,

it only implicates *federal* offenses, which are no more offensive to qualification to hold public office than convictions of state offenses.⁴

The United States Code contains literally hundreds of misdemeanor offenses. Some limited examples of crimes classified as misdemeanors under federal law are:

- a. 15 U.S.C. §1211, which prohibits persons from introducing into interstate commerce a residential refrigerator which cannot be opened from the inside;
- b. 16 U.S.C. § 9a, prohibits violation of regulations of the Department of the Army governing protection and maintenance of good order in national military parks, national parks, battlefield sites, national monuments, and miscellaneous memorials;

⁴ Indeed, under § 115.348, if a person is convicted, for instance, of domestic assault in the third degree (§ 565.024 RSMo), a Class A misdemeanor offense, he or she could hold public office in Missouri when, as noted below, a person convicted of a federal misdemeanor of violating a hunting law could not hold office in the State of Missouri.

- c. 16 U.S.C. § 373, which prohibits bathing in the springs of the Hot Springs National Park without permission from a physician registered with the Park Superintendent or using the permission of a physician such person knew was not so registered;
- d. 18 U.S.C. § 1863, which prohibits trespassing on federal forest lands;
- e. 13 U.S.C. § 223, which prohibits landlords from refusing census workers access to tenants of rented properties.

As another example, the Lacy Act, 16 U.S.C. §§ 3371-3378, makes violations of state hunting laws and regulations upon federal lands within Missouri a violation of federal law. See, e.g., *United States v. Lewis*, 240 F.2d 866, 869 (10th Cir. 2110), holding that ‘when a state hunting law is violated, that violation is an adequate basis for a Lacy Act prosecution.’ Thus, as violation of the Missouri Wildlife Code upon National Forest Service property in Missouri is a violation of both Missouri and federal law. Under § 115.348, if a person was convicted of a hunting law violation in the state court, he or she could hold public office in Missouri. If, however, for the same act of violating hunting laws, he or she was convicted of a federal hunting law violation, such person could never hold public office in Missouri.

There is simply no adequate state interest or basis for disqualifying persons convicted of federal felonies or misdemeanors from elected office. While Missouri law does contain provisions prohibiting persons convicted of felony offenses from running for elected office during the period they are under sentence or probation, Missouri does not prohibit persons generally convicted of misdemeanor offenses under state law from running for elective office in the State of Missouri.

Prior to the enactment of § 115.348, Missouri had adopted a statutory framework governing the types of crimes that the Legislature deemed disabling for purposes of voting and running for elective office. Appellants misapprehend Respondents' arguments in regard to the inconsistencies between § 115.348 and these other provisions of Missouri law. Under Article 561 RSMo, "Collateral Consequences of Conviction," § 561.021.2 addresses disqualification to hold elective office, and provides:

Except as provided in subsection 3 of this section, a person who pleads guilty or nolo contendere or is convicted under the laws of this state of a felony or under the laws of another jurisdiction of a crime which, if committed within this state, would be a felony, shall be ineligible to hold any public office, elective or appointive, under the government of this state or any agency or political subdivision thereof, until the completion of his sentence or period of probation.

Under § 561.021.3 RSMo, a person who is convicted of a felony under the laws of this State or another jurisdiction connected with the exercise of the right suffrage is forever disqualified from holding any public office in Missouri. See § 561.026 RSMo, App. 1 hereto. Further, § 561.026 RSMo renders a person who has been convicted of a crime ineligible to run for public office during any period of imprisonment. Thus, prior to the enactment of § 115.348, Missouri law clearly articulated a constitutionally defensible basis for disqualifying persons for elective

office, either until completion of a term of imprisonment (§ 561.026 RSMo), the completion of a sentence or period of probation (§ 561.021.2 RSMo), or for a felony conviction connected with the exercise of the right of suffrage (§ 561.021.3 RSMo).

State law did not previously link conviction of a misdemeanor offense to eligibility for elective office, with the exception of § 561.021.1(2) RSMo, which would cause a person holding public office to forfeit that office upon conviction of a crime involving misconduct in office or dishonesty.⁵ App. 1 hereto.

Section 561.021 RSMo is not limited solely to forfeiture of existing elective office. Rather, it speaks to the eligibility of people convicted of crimes to hold elective office in this State.

⁵ Mr. Rizzo's misdemeanor conviction occurred while he held a position in the State House of Representatives. The House conducted a review of Mr. Rizzo's situation and concluded that his misdemeanor conviction did not provide any basis for disqualification from his House seat and he was re-elected three times thereafter. Tr. 9, 43.

Moreover, § 561.021.2 RSMo specifically addresses the rights of persons convicted of federal felonies to hold public office, and is directly at odds with § 115.348. Section 561.021.2 RSMo bars from office persons convicted of an offense “under the laws of another jurisdiction” which, if committed in Missouri, would be a felony, until completion of their sentence or period of probation. Appellants do not dispute that federal felony convictions would fall under this section and, thus, would be incompatible with § 115.348. Thus, under Missouri law before enactment of § 115.348, a person convicted of a federal felony was only disqualified from elective office during the period of their sentence or probation, except if the crime of conviction involved voting (§ 561.021.3 RSMo).

Appellants have failed to articulate valid state interests to be advanced by excluding from elective office people convicted only of federal court misdemeanors and not those convicted of other misdemeanors. The reason it cannot is that there simply is no justification. Missouri places no restrictions on the rights of persons convicted of misdemeanors in this State to hold office, except possibly during a period of imprisonment and for misdemeanors involving official misconduct. The reason why is that there is no state interest in restricting the rights of persons convicted of misdemeanors from holding public office, with the exceptions described above.

This Court should follow the reasoning of Judge Hunter and the Eighth Circuit in *Antonio v. Kirkpatrick, supra*, that “even under conventional standards of review, a State

cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation." *Id.* at 1149-50, *citing Bullock v. Carter*, 405 U.S. 134, 145, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972). *See also Peeper v. Calloway County Ambulance Dist.*, 122 F.3d 619, 623(8th Cir. 1997) (on review of restrictions on candidacy, Court must identify and evaluate precise interests put forward by the State as justification, must determine legitimacy and strength of each of those interests, and consider the extent to which they make it necessary to burden plaintiffs' rights.)

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Art. I, § 2 of the Missouri Constitution require generally that all persons similarly situated be treated alike by laws and actions of the government. As a citizen, Rizzo has a constitutionally protected right to participate in elections on an equal basis with other citizens seeking elective office, including the Jackson County Legislature. Section 115.348 deprives him of that right, and further denies him equal protection by treating him differently from all other persons convicted of state misdemeanors, in violation of law and the Missouri and United States Constitutions. It also deprives him of due process and equal protection in that it does not contain any provision for restoration of rights to run for office, as does §561.021 RSMo. Federal misdemeanors are no more serious or indicative of any reasonable state interest in denying someone the right to run for office than are all state misdemeanors. Precluding Rizzo from holding office merely because of a federal

misdemeanor conviction denies him equal protection under the laws of the United States and Missouri.

It cannot be credibly argued that § 115.348 advances any legitimate state interest. Appellants cannot articulate any basis whatsoever, compelling, substantial, reasonable, or otherwise, why persons convicted of any federal misdemeanor should be forever excluded from public office. Rather, as Judge Callahan found, the distinction:

does not ensure integrity in the political process, rather it holds that process up to ridicule. Instead of dampening cynicism, it heightens it. The differing treatment is not rationally related to the goal of the legislation, but is hostile to it.

L.F. at 454.

Whether the Court applies a strict scrutiny or rational/reasonable basis test to a purported state interest advanced by § 115.348, Appellant's arguments do not demonstrate that § 115.348 meets constitutional standards.

3. Section 115.348 Violates Respondents' First Amendment Rights by Depriving Them of Their Constitutionally-Protected Rights to Participate in the Political Process and To Exercise Their Right to Vote.

The First Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment to the United States Constitution, and Art.

I, §§ 8 and 9 of the Missouri Constitution, guarantee to citizens the rights of free expression and redress to their government.

First Amendment freedoms and the right to vote are fundamental rights. Any state restriction which interferes with the exercise of a fundamental right is subject to strict scrutiny and cannot be upheld unless supported by sufficiently important interests and is closely tailored to effectuate only those interests. *Komosa v. Komosa*, 939 S.W.2d 479 (Mo. App. E.D. 1997). A statute challenged on First Amendment grounds must be narrowly tailored to achieve a compelling state interest in order to survive strict scrutiny review. *Gralike v. Cook*, 191 F.2d 911 (8th Cir. 1999).

This extends to exercise of those rights in the political process. The right to participate in politics is a fundamental right and a statute that infringes thereon must withstand rigorous scrutiny. *Reeder v. Kansas City Bd. of Police Com'rs*, 796 F.2d 1050 (8th Cir, 1986); *McCarthy v. Kirkpatrick*, 420 F.Supp. 366, 372 (W.D.Mo. 1976) (where rights of voting and candidacy are at stake, only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms); see also *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. banc 1984) (freedom of speech, particularly as it pertains to political association and advocacy, has expansive and comprehensive scope). Restricting that right in a manner so as to effectively deny or impede it is a violation of constitutional guarantees. *Preisler v. City of St. Louis*, 322 S.W.2d 748 (Mo. 1959).

As citizens and residents of Jackson County, Runnels and Castles have a constitutionally protected right to associate with, support and vote for the candidate of their choice. They both desire to vote for Rizzo, to associate themselves with him in support of his candidacy and to publicly express their support for his re-election. Section 115.348 unconstitutionally impairs their rights to do so.

Further evidence of the impermissibly arbitrary and unconstitutional nature of § 115.348 is the manner in which it limits Rizzo's right to vote. It deprives him of the right to be a candidate for public office as a result of a federal misdemeanor conviction more than 13 years ago. However, no provision of Missouri law precludes him from voting, despite that conviction. Consequently, his legally-protected right to vote is impaired as he cannot exercise that right to vote for himself.

CROSS-APPELLANTS' BRIEF

POINTS RELIED ON

- I. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 21 OF THE MISSOURI CONSTITUTION IN THAT AMENDMENTS TO HB 58, INCLUDING §115.348, CHANGED ITS ORIGINAL PURPOSE.

Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. banc 1997)

C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. banc 2000)

Allied Mut. Ins. Co. v. Bell, 185 S.W.2d 4 (Mo. 1945)

Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. banc 1996)

- II. **THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 23 OF THE MISSOURI CONSTITUTION IN THAT HB 58, AS FINALLY PASSED, INCLUDES MULTIPLE SUBJECTS.**

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. banc 1994)

Westin Crown Center Plaza Hotel Co. v. King, 664 S.W.2d 2 (Mo. banc 1984)

St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998)

Carmack v. Director, Missouri Dept. of Agriculture, 945 S.W.2d 956 (Mo. banc 1997)

III. THE TRIAL COURT ERRED IN NOT FINDING THE §115.348 VIOLATED ARTICLE III, SECTION 28 OF THE MISSOURI CONSTITUTION BY AMENDING SECTION 561.021.2 RSMO. WITH REGARD TO THE EFFECT OF A FEDERAL FELONY CONVICTION ON THE RIGHT TO HOLD ELECTED PUBLIC OFFICE IN MISSOURI.

MO. CONST. Art. III, § 28

MO. REV. STAT. § 561.021.2

State ex rel. McNary v. Stussie, 518 S.W.2d 630 (Mo. banc 1974)

IV. THE TRIAL COURT ERRED BY NOT FINDING THAT SECTION 115.348 AND HB 58 VIOLATE ARTICLE I, SECTION 2; ARTICLE VIII, SECTION 2; AND ARTICLE XII OF THE MISSOURI CONSTITUTION BY PURPORTING TO AMEND THE CONSTITUTIONAL RIGHT TO RUN FOR ELECTIVE OFFICE BY STATUTE RATHER THAN CONSTITUTIONAL AMENDMENT.

MO. CONST. Art. XII

MO. CONST. Art. I, § 2

MO. CONST. Art. III, § 2

State ex rel. Creamer v. Blair, 270 S.W.2d. 1 (Mo. 1954)

V. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE VI, SECTION 18 OF THE MISSOURI CONSTITUTION IN THAT THEY INFRINGE ON THE RIGHTS OF THE

CITIZENS OF JACKSON COUNTY TO FORM THEIR OWN FORM OF GOVERNMENT AND SET QUALIFICATIONS FOR ELECTED OFFICIALS BY ESTABLISHING ARBITRARY LIMITATIONS ON THOSE WHO MAY RUN FOR OFFICE IN CONTRAVENTION OF PROVISIONS IN JACKSON COUNTY'S DULY ADOPTED HOME RULE CHARTER.

MO. CONST. Art. VI, § 18

Constitutional Home Rule Charter of Jackson County, Art. II, §§ 5, 9, 13

State ex rel. Shepley v. Gamble, 280 S.W.2d 656 (Mo. banc 1955)

Tremayne v. City of St. Louis, 6 S.W.2d 935 (Mo. banc 1928)

VI. THE TRIAL COURT ERRED BY NOT FINDING THAT SECTION 115.348 AND HB 58 VIOLATE ARTICLE III, SECTION 40(30) OF THE MISSOURI CONSTITUTION BECAUSE INCLUSION OF §115.348 IN HB 58 MADE IT A SPECIAL LAW.

MO. CONST. Art. III, § 40(30)

State ex rel. Lionberger v. Polle, 7 Mo. 645, 650 (1880)

VII. THE TRIAL COURT ERRED BY NOT FINDING THAT §115.348 WAS A SPECIAL LAW, THE PASSAGE OF WHICH IN HB 58 VIOLATED THE PROVISIONS OF ARTICLE III, SECTION 42 OF THE MISSOURI CONSTITUTION.

MO. CONST. Art. III, § 42

VIII. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE I, SECTION 13 OF THE MISSOURI CONSTITUTION, WHICH PROHIBITS LAWS THAT ARE RETROSPECTIVE IN APPLICATION, IN THAT THE STATUTE CLEARLY IMPAIRED ONE OR MORE VESTED LEGAL RIGHTS OF RESPONDENTS.

MO. CONST. Art. I, § 13

Silcox v. Silcox, 6 S.W.3d 899 (Mo. banc 1999)

Lincoln Credit Co. v. Peach, 636 S.W.2d 31 (Mo. banc 1982)

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 21 OF THE MISSOURI CONSTITUTION IN THAT AMENDMENTS TO HB 58, INCLUDING §115.348, CHANGED ITS ORIGINAL PURPOSE.

Art. III, § 21 of the Missouri Constitution places procedural limitations on the legislative process which serve to facilitate orderly procedure, avoid surprise, and prevent log rolling, in which several matters that would not individually command a majority vote, are rounded up into a single bill to ensure passage and keep individual members of the Legislature and the public fairly apprised of subject matter of pending laws and insulate the Governor from “take-it-or-leave-it” choices when contemplating use of the veto power. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997). This provision is not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with legislative intent are made. Rather, the restriction is against matters that are not germane to the object of the legislation or that are unrelated to its original object. *Id.* Moreover, alterations that bring about an extension or limitation of the scope of the bill are not prohibited and even the inclusion of a new matter is not improper, if germane. *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000).

Art. III, § 21 provides that “no bill shall be amended in its passage through either house as to change its original purpose.” To determine compliance with this provision, the Court must look first to the original purpose stated at the time the bill was introduced. *Id.*

The title to HB 58, as finally passed, states its purpose is to repeal certain sections of the Revised Statutes of Missouri and to enact 165 new sections “relating to political subdivisions, with penalty provisions.” As first read, on January 5, 2005, HB 58 was a nine-page long act to repeal and enact 7 sections “relating to political subdivisions, with penalty provisions.” L. F. 40-48. On March 15, 2005, the HCS HB 58 was adopted by the House, at which time HB 58 was an act to repeal and enact 33 new sections “relating to political subdivisions, with an emergency clause for a certain section.” L. F. 39. Thereafter, on May 3, 2005, the Senate adopted SCS HCS HB 58, which provided for the repeal and enactment of 119 sections. L. F. 75, 419. Finally, on May 13, 2005, the Conference Committee Substitute for SCS HCS HB 58 was adopted by the House and the Senate and was approved by the Governor on July 7, 2005. As finally approved and signed, HB 58 had ballooned to 199 pages in length as an act to repeal and enact 165 new sections “relating to political subdivision, with penalty provisions.” L. F. 219-419.

At the time of first reading, HB 58 covered 7 statutory sections that all reasonably related to political subdivisions.⁶ As finally amended, HB 58 contained

⁶ Sections 50.760, 50.770, 50.780, 50.800, 50.810, 50.815, relating to “County Finances, Budget and Retirement Systems”, and 250.140, relating to “Sewerage Systems and Waterworks”.

165 new subsections, which affect many provisions of the Revised Statutes of Missouri:

<u>Topic</u>	<u>Statutory Sections(s)</u>
Civil Defense	44.45, 44.090
County Commissions and County Building	49.093, 49.272
County Finances, Budget and Retirement Systems	50.343, 50.530, 50.760, 50.770, 50.780, 50.783, 50.784, 50.1030, 50.1031
County Collectors	52.317
County Treasurers	54.010, 54.280, 54.320, 54.330
County Auditors	55.160
County Planning of Deeds	59.005, 59.044
County Planning-Zoning-Recreation-Natural Streams and Waterways	64.215, 64.940
Township Organization Counties	65.030, 65.110, 65.150, 65.160, 65.180, 65.183, 65.190, 65.200, 65.220, 65.230, 65.300, 65.460, 65.490, 65.600, 65.610
Political Subdivisions, Miscellaneous Provisions	67.055, 67.459, 67.469, 67.1003, 67.1062, 67.1067, 67.1069, 67.1070, 67.1159,

	67.1305, 67.1350, 67.1401, 67.1451, 67.1754, 67.1775, 67.1809, 67.1850, 67.2555
Provisions Relative to All Cities and Towns	71.012, 71.794
Fourth Class Cities	79.600
Constitutional Charter Cities	82.291, 82.301, 82.302, 82.303, 82.305, 82.1025
Taxation in Other Cities	94.270, 94.700, 94.837, 94.838
Municipal Housing	99.1080, 99.1082, 99.1086, 99.1088, 99.1090, 99.1092
Industrial Development	100.050, 100.059
Public Officers and Employees-Miscellaneous Provisions	105.711
Election Authorities and Conduct of Elections	115.013, 115.019, 115.348
Tax Relief	135.010
Collection of State Taxes	136.010, 136.160
Assessment and Levy of Property Taxes	137.071, 137.073, 173.078, 137.100, 137.106, 137.115, 137.122, 137.130, 137.465, 137.585, 137.720
Equalization and Review of Tax Assessments	138.100

Payment and Collection of Current Taxes	139.040,	139.055,	139.120,
	139.350,	139.400,	139.420,
	139.430,	139.440,	139.450,
	139.460		
Collection of Delinquent Taxes Generally	140.150		
Budget and Current Financing	165.071		
Emergency Services	190.010,	109.015,	190.090,
	190.292,	190.335	
Convalescent, Nursing and Boarding Homes	198.345		
County Health and Welfare Programs	205.010		
Child Protection and Reformation	210.860,	210.861	
State Housing	215.246		
Department of Corrections	217.905		
Maintenance of Public Roads	233.295		
Drainage Districts Organized in Circuit Court	242.560		
Levee Districts	245.205		
Provisions Relating to all Drainage and Levee Districts	246.005		
Public Water Supply Districts	347.060,	247.180	
Sewer Districts in Certain Counties	249.1150		
Sewerage Systems and Waterworks-City or District	250.140		

Insect Pests and Weeds	263.245
Soil Conservation	278.240
Registration and Leasing of Motor Vehicles	301.025
Liquor Control Law	311.087
Licensed Gaming Activities	313.800, 313.820
Fire Protection	320.121
Fire Protection Districts	321.120, 321.190, 321.220, 321.322, 321.603
Industrial Development Corporations	349.045
Gas, Electric, Water, and Sewer Companies	393.015, 393.016
Lost and Unclaimed Property	447.620, 447.622, 447.625, 447.640
Probate Code-Administration of Decedents' Estates	473.770, 473.771
Circuit Courts	478.570, 478.600
Court Costs	488.2220
Torts and Actions for Damages	537.600
Probation	559.607
Water Pollution	644.076
State Standards	701.038, 701.053

By the time it finally moved through the legislative process, HB 58 included provisions relating to a myriad of different topics, as set out above, and affects no fewer than 54 chapters of the Revised Statutes of Missouri: 44, 49, 50, 54, 55, 59, 64, 65, 67, 71, 79, 82, 94, 99, 100, 105, 115, 135, 136, 137, 138, 139, 140, 165, 190, 205, 210, 215, 217, 231, 233, 242, 245, 246, 247, 249, 250, 263, 278, 301, 311, 313, 320, 321, 349, 393, 447, 473, 478, 488, 537, 559, 644, and 701.

As originally introduced, the purpose of HB 58 would have been to impose tighter controls on county expenditures (see §§ 50.760 through 50.780, 50.800 through 50.815) and changes to how water supply district recover on past due amounts (see § 250.140). In contrast, the final passed bill affects topics ranging from limitations on liquor licenses in entertainment districts (§ 311.0987), extending land owners' duties for controlling brush (§ 263.245), investigation of sewage complaints by the Department of Health and Senior Services except when part of a communicable disease investigation or following complaint by an aggrieved adjacent landowner (§ 701.038), and limitations on the right to be a candidate for any elected office in the State (§ 115.348).

The effects of HB 58 as introduced and as finally enacted clearly differ. See *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 6 (Mo. 1945) (“it would seem that the effect of the bill as introduced should have some weight in determining its general purpose”). As changed over its movement through the Legislature, HB 58 clearly was extended beyond what was “germane” to the bill’s original purpose. See *Akin v.*

Dir. of Revenue, 934 S.W.2d 295, 302 (Mo. banc 1996) (constitution prohibits “the introduction of matters not germane to the object of the legislation or unrelated to its original subject”).

In *Stroh Brewery*, the original bill stated it would amend the state liquor laws by including one section. The final bill included eight sections. As all were reasonably related to the original purpose of liquor control, the changes did not violate Art. III, § 21. 954 S.W.2d at 327. In this case, any reasonable review of the final 165 topics in HB 58 leads to the conclusion that many have little or nothing to do with political subdivisions, or are sufficiently related to other parts of the Missouri Statutes or Constitution so as to render them improperly included in a bill purportedly relating to political subdivisions.

This is particularly true with respect to §115.348. The original seven sections (and indeed 164 of the final 165 sections) have absolutely no connection to a law restricting the right of a citizen to run for elective office at any level of state or local government. Moreover, when read with the provisions of §561.021 RSMo., it is clear that §115.348 covers much broader subject matter than political subdivisions and violates the restriction in Art. III, § 21 against changing the purpose. While Plaintiffs submit that many of the 165 sections go well beyond the original purpose, their principal complaint is with §115.348 RSMo., which is clearly severable. Accordingly, that statute must be struck down.

II. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE III, SECTION 23 OF THE MISSOURI

CONSTITUTION IN THAT HB 58, AS FINALLY PASSED, INCLUDES MULTIPLE SUBJECTS.

HB 58 also violates the multiple subparts provisions of Art. III, § 23 of the Missouri Constitution. Section 23 contains two, separate procedural limitations on the Legislature. The first prohibits a bill containing more than one subject and the second requires that the title to the bill clearly express that single subject. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101 (Mo. banc 1994). The first requirement is the corollary to Art. III, § 21. *Id.* Together, they serve “to facilitate orderly legislative procedure. By limiting each bill to a single subject [and requiring that amendments no change a bill’s original purpose], the issues presented by each bill can be better grasped and more intelligently disused.” *Id.*, citing Ruud, “No Law Shall Embrace More than One Subject”, 42 Minn.L.Rev. 389, 391 (1958).

The second purpose “is to prevent ‘logrolling’ - the practice of combining a number of unrelated amendments in a bill, none of which alone could command a majority, but which, taken together, combine the votes of a sufficient number of legislators having a vital interest in one portion of the emended bill to muster a majority for its entirety.” *Id.*; see also *City of St. Louis v. Tiefel*, 42 Mo. 578, 590 (1868); *State v. Miller*, 45 Mo. 495, 498 (1870).

A third purpose is to defeat surprise within the legislative process and to “prevent a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a

pending bill.” *Hammerschmidt*, 877 S.W.2d at 101, *citing State ex rel. Normandy School District of St. Louis County v. Small*, 356 S.W.2d 864, 868 (Mo. banc 1962).

A fourth purpose is to “assure that the people are fairly apprised, ‘through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered in order that they have [an] opportunity of being heard thereon . . . ’ ” *Id.* at 102, *citing Small*, 356 S.W.2d at 868.

The Court must look to the bill, as finally passed, to determine compliance. *Stroh Brewery, supra*. The test is whether all provisions of the bill fairly relate to the same subject, have natural connection therewith, or are incidents or means to accomplish its purpose. *Id.*; *Westin Crown Center Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984); *Missouri Health Care Ass’n v. Attorney General of the State of Missouri*, 953 S.W.2d 617 (Mo. 1997). The bill’s title cannot be so general that it tends to obscure the contents of the act and cannot be so broad as to render the single subject mandate meaningless. *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. 1998). In that case, the narrative portion of the bill, indicating that it related to “certain incorporated and unincorporated entities” was too broad and amorphous to identify a single subject. The court struck the provision, as the title could describe any legislation which affects, in any way, businesses, charities, civic organizations, government or governmental agencies. *Id.* The stated purpose of HB 58, “political subdivisions” is not sufficiently single, readily identifiable and

reasonably narrow purpose to withstand the limitations of Section 23. See *Hammerschmidt*, 877 S.W.2d at 102, n. 3:

The constitution is divided into separate articles ... The organization of the constitution creates a presumption that matters relating to separate subjects therein described should ... not be commingled under unrelated headings. The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution meant by 'one subject.

citing Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 831 (Mo. banc 1990).

When a bill violates § 23, the entire bill is deemed unconstitutional unless the Court is convinced, beyond reasonable doubt, that one of the bill's multiple subjects is its original, controlling purpose, in which case the Court will sever out the offending parts, leaving the original purpose intact. *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997). Section 115.348 is severable and should be struck down as a provision passed in violation of Section 23.

III. THE TRIAL COURT ERRED IN NOT FINDING THE §115.348 VIOLATED ARTICLE III, SECTION 28 OF THE MISSOURI CONSTITUTION BY AMENDING SECTION 561.021.2 RSMO. WITH REGARD TO THE EFFECT OF A FEDERAL FELONY CONVICTION ON THE RIGHT TO HOLD ELECTED PUBLIC OFFICE IN MISSOURI.

Section 115.348 cannot be reconciled with the provisions of §561.021.2 RSMo. As such, it violates Article III, Section 28 of the Missouri Constitution. That provision states that “No act shall be amended by providing that words be stricken out or inserted, but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act of section amended, shall be set forth as amended.” Section 561.021.2 only disqualifies from office a person convicted of a crime “under the laws of another jurisdiction of a crime which, if committed within this state, would be a felony” (such as a federal felony) . . . “*until the completion of his sentence or period of probation.*” (emphasis added). Thus, under §561.021.2 RSMo., a person convicted of a federal felony would be entitled to run for Missouri office on completion of his sentence or probation. Section 115.348 RSMo. is clearly at odds with this earlier, long established provision. Section 115.348 did not properly amend §561.021.2 RSMo., and, therefore, is unconstitutional and cannot be given effect. *State ex rel. McNary v. Stussie*, 518 S.W.2d 630, 632 (Mo. banc 1974).

IV. THE TRIAL COURT ERRED BY NOT FINDING THAT SECTION 115.348 AND HB 58 VIOLATE ARTICLE I, SECTION 2; ARTICLE VIII, SECTION 2; AND ARTICLE XII OF THE MISSOURI CONSTITUTION BY PURPORTING TO AMEND THE CONSTITUTIONAL RIGHT TO RUN FOR ELECTIVE OFFICE BY STATUTE RATHER THAN CONSTITUTIONAL AMENDMENT.

Art. VIII, § 2 of the Missouri Constitution provides that a person may be disqualified from voting upon conviction of a felony or a “crime connected with the exercise of the right of suffrage.” The right to run for office is analogous to the right to suffrage and is protected by Art. I, § 25 and Art. VIII, § 2 of the Missouri Constitution. HB 58 and §115.348 alter and restrict this fundamental, constitutionally protected right, and thus, are unconstitutional.

Missouri law requires any amendment to the Constitution be by formal amendment as provided for in Art. XII of the Missouri Constitution and not by amendment to a bill in the General Assembly. The Legislature may supplement constitutional measures but cannot enact measures inconsistent therewith. *State ex rel. Creamer v. Blair*, 270 S.W.2d. 1 (Mo. 1954). If a statute conflicts with a constitutional provision or provisions, it must be held invalid, *State ex rel. Upchurch v. Blunt*, 810 S.W.2d. 515 (Mo. 1991).

As they do purport to alter a fundamental right and set qualifications for elective office, HB 58 and § 115.348 violate Art. I, § 2, Art. VIII, § 2 and Art. XII of the Missouri Constitution. *See City of Kansas City v. Torpe*, 499 S.W.2d. 454 (Mo. 1973) (A law which prohibits the exercise of a constitutionally protected right must be stricken.)

V. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE VI, SECTION 18 OF THE MISSOURI CONSTITUTION IN THAT THEY INFRINGE ON THE RIGHTS OF THE CITIZENS OF JACKSON COUNTY TO FORM THEIR OWN FORM OF GOVERNMENT AND SET QUALIFICATIONS FOR ELECTED OFFICIALS BY ESTABLISHING ARBITRARY LIMITATIONS ON THOSE WHO MAY

RUN FOR OFFICE IN CONTRAVENTION OF PROVISIONS IN JACKSON COUNTY'S DULY ADOPTED HOME RULE CHARTER.

The citizens of Jackson County have adopted a Charter under the provisions of Art. VI, § 18 of the Missouri Constitution. Art. II, §§ 5, 9, and 13 of that Charter specify the qualifications and eligibility of persons seeking election to the office of membership in the county legislature. As a person holding officer pursuant to that Charter, Rizzo is aggrieved by the limitations §115.348 purports to place on the rights of citizens to form a charter government, and has standing to assert this claim, as do Runnels and Castles, as citizens of Jackson County.

In *Grant v. City of Kansas City, Missouri*, 432 S.W.2d 89, 92 (Mo. banc 1968), the Supreme Court stated:

[T]hat as to its form of organizations, and to its private, local corporate functions, and the manner of exercising them, the constitutional provision grants to the people ... part of the legislative power of the state for the purpose of determining such matters and incorporating them into their charter as they see fit, free from control of the General Assembly. When matters of this nature are adopted in a charter, as prescribed by a Constitution, such charter provisions have the force and effect of the Legislature and can only be declared invalid for some reason, namely if they violate the constitutional limitations or prohibitions.

The citizens of Jackson County, having properly exercised the constitutional power granted them to adopt a charter government, are free to form such a government as they see fit, and to set out and establish their officers as well as the duties and qualifications for election of those officers, free from control by the General Assembly. *See State ex rel. Shepley v. Gamble*, 280 S.W.2d 656, 662 (Mo. banc 1955) (people of a charter county have the right to determine the number, kinds, manner of selection, terms of office and salaries of its county officers.) A constitutional charter is a legislative Act and stands on a par with an Act of the Legislature. *Tremayne v. City of St. Louis*, 6 S.W.2d 935, 939 (Mo. banc 1928). The powers which the county can exercise by its own special charter, if unrestrained by constitutional limitations, are all the powers which the people delegate to it under the charter. *State ex rel. Kansas City v. North Kansas City*, 228 S.W.2d 762, 771 (Mo. banc 1950).

Section 115.348 RSMo. is unconstitutional in that it violates the provisions of Art. VI, § 18 of the Missouri Constitution in that it prevents the people of charter counties from determining their own form of government and their ability to decide the qualifications and scope of authority for the officers named in the charter.

VI. THE TRIAL COURT ERRED IN NOT FINDING THAT SECTION 115.348 AND HB 58 VIOLATE ARTICLE III, SECTION 40(30) OF THE MISSOURI CONSTITUTION BECAUSE INCLUSION OF §115.348 IN HB 58 MADE IT A SPECIAL LAW.

In Missouri, a statute pertaining to persons or things as a class is a general law whereas statutes which relate to persons or things of a class are special laws.

State ex rel. Lionberger v. Polle, 7 Mo. 645, 650 (1880); *Fire District of Lemai v. Schmidt*, 184 S.W.2d 593 (Mo. banc 1945)

Art. III, § 40(30) of the Missouri Constitution provides that the “General Assembly shall not pass any local or special law where a general law can be made applicable, and whether a general law could have been applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject.”

The legislative sponsor of the amendment leading to the inclusion of § 115.348 in HB 58 was Victor Callahan, a state senator from Jackson County, Missouri, with whom Rizzo has had and continues to have differing views on a number of political matters. Moreover, after passage of HB 58, Senator Callahan told Rizzo that §115.348 was to prevent Rizzo from holding office again. Tr. 16.

Section 115.348 is a special law pertaining to particular persons of a class and is arbitrary and without a rational basis to a legislative purpose. Rather, it is an improper special law containing a punitive purpose to improperly deprive Rizzo of his right to seek to hold continued public office in the Jackson County Legislature.

Further, §115.348 is arbitrary and has no rational basis and is, therefore, special or local law which violates the constitutional prohibition of Article III, Section 40(30), by the legislative adoption of a special or local law where a general law could be more applicable.

VII. THE TRIAL COURT ERRED BY NOT FINDING THAT §115.348 WAS A SPECIAL LAW, THE PASSAGE OF WHICH IN HB 58 VIOLATED THE PROVISIONS OF ARTICLE III, SECTION 42 OF THE MISSOURI CONSTITUTION.

Art. III, § 42, of the Missouri Constitution provides:

No local or special law shall be passed unless a notice, setting for the intention to apply therefor and the substance of the contemplated law, shall have been published in the locality where the matter or thing to be affected is situated at least thirty days prior to the introduction of the bill into the General Assembly and in the manner provided by law. Proof of publication shall be filed with the General Assembly before the act shall be passed, and the notice shall be recited in the act.

Section 115.348, as applied to Rizzo as a person seeking election under a duly adopted county charter, is a special or local law. The provisions of Art. III, § 42 were not followed by the Legislature in the passage of HB 58, and the enactment therein of § 115.348 violates the constitutional prohibitions under Art. III, § 42 by the legislative adoption of a special or local law where the procedures for passage were not followed.

VIII. THE TRIAL COURT ERRED IN FINDING THAT SECTION 115.348 AND HB 58 DID NOT VIOLATE ARTICLE I, SECTION 13 OF THE MISSOURI CONSTITUTION, WHICH PROHIBITS LAWS THAT ARE RETROSPECTIVE

IN APPLICATION, IN THAT THE STATUTE CLEARLY IMPAIRED ONE OR MORE VESTED LEGAL RIGHTS OF RESPONDENTS.

Art. I, § 13 of the Missouri Constitution prohibits laws that are retrospective in application. A statute operates retrospectively when it takes away or impairs a vested or substantial right or imposes a new duty with respect to a past transaction. *Silcox v. Silcox*, 6 S.W.3d 899, 904 (Mo. banc 1999); *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 34 (Mo. banc 1982). Application of §115.348 to Rizzo, Runnels and Castles deprives them of a substantial, rather than procedural right, and is retrospective in application. As such, it is unconstitutional and must be stricken.

CONCLUSION

The judgment of the trial court that § 115.348 violates equal protection should be affirmed. Alternatively, this Court should reverse the judgment of the trial court and find that § 115.348 and HB 58 are unconstitutional for the reasons set forth above and as presented to the trial court.

Respectfully submitted,

WYRSCH HOBBS & MIRAKIAN, P.C.

By:

JAMES R. WYRSCH	MO# 20730
KEITH E. DRILL	MO #37065
1000 Walnut Street, Suite 1600	
Kansas City, Missouri 64106	
816-221-0080 Telephone	
816-221-3280 Facsimile	
<i>Attorneys for Plaintiffs</i>	

Certificate of Service

The undersigned certifies that a copy of the above and foregoing was served by United States mail, postage prepaid, this 24th day of March, 2006, to:

Paul C. Wilson, Esq.
Alana M. Barragan-Scott, Esq.
Daniel Hall, Esq.
Assistant Attorneys General
Missouri Supreme Court Building
P.O. Box 899
Jefferson City, MO 65102
Attorney for Defendants Jay Nixon and State of Missouri

Bradley A. Constance, Esq.
Stewart, Constance, Cook, et al.,
501 West Lexington
Independence, MO 64050
Attorney for Defendants Jackson County Election Commissioners

David B. Raymond, Esq.
Blackwell Sanders Peper Martin
4801 Main Street, Suite 1000
Kansas City, MO 64112
Attorney for Defendants Kansas City Election Commissioners

Edward B. Rucker, Esq.
County Counselor
Jackson County Courthouse
415 East 12th Street, Suite 200
Kansas City, MO 64106
Attorney for Defendant Mary Jo Spino

Attorney for Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify that Respondent's Brief and Cross-Appellant's Brief of Respondents/Cross-Appellants Henry Rizzo, Lindsay Runnels, and Angela Castles, in the above-captioned matter complies with Rule 55.03 of the Missouri Rules of Civil Procedure. More specifically, this brief was prepared using WordPerfect 9, printed in 13-point Times New Roman proportionally-spaced type font. I further certify that, in conformity with the requirements of Rule 84.06(b), the above reply brief contains 11,971 words. I further certify that the computer diskette submitted herewith was new out of the box and that after the brief was copied thereon, the diskette was scanned for viruses using Trend OfficeScan WinNT 5.58, and no viruses were detected.

—

Attorney for Appellant